

\*\*Original filed 5/1/07\*\*

NOT FOR CITATION  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRELL L. BRADFORD,	)	No. C 05-4974 JF (PR)
	)	
Plaintiff,	)	ORDER OF DISMISSAL
vs.	)	WITHOUT PREJUDICE;
	)	GRANTING IN PART AND
N. GRANNIS, et al.,	)	DENYING IN PART
	)	PLAINTIFF'S MOTION
Defendants.	)	
_____	)	(Docket No. 15)

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 concerning his classification score within the California Department of Corrections and Rehabilitation ("CDCR"). The Court granted Plaintiff leave to proceed in forma pauperis and dismissed the complaint with leave to amend. Plaintiff has filed a motion requesting permanent leave from his original complaint and that the Court transfer his in forma pauperis status to the United States District Court for the Eastern District of California. Plaintiff states that he intends to proceed with a habeas petition in the Kern County Superior Court to exhaust his claims.

The Court construes Plaintiff's motion as a motion to voluntarily dismiss the instant complaint without prejudice. A plaintiff has the absolute right to dismiss his or her action by filing a notice of dismissal at any time before service by the adverse party of

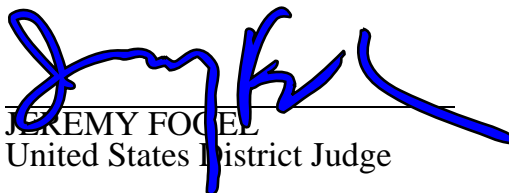
1 an answer or of a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(i). Said  
2 dismissal may be with or without prejudice, but unless plaintiff's notice of dismissal states  
3 otherwise, it is deemed to be "without prejudice." See Fed. R. Civ. P. 41(a)(1);  
4 Humphreys v. United States, 272 F.2d 411, 412 (9th Cir. 1959). No court order is  
5 required. Plaintiff's notice of dismissal is effective by itself to terminate the action: "[A]n  
6 action may be dismissed by the plaintiff without order of the court . . . by filing a notice  
7 of dismissal." Fed. R. Civ. P. 41(a)(1); see also Hamilton v. Shearson-Lehman American  
8 Exp. Inc., 813 F.2d 1532, 1534-1536 (9th Cir. 1987) (Rule 41(a)(1)(i) does not require  
9 leave of court to dismiss the action).

10 The Court notes that Plaintiff may raise his classification claims in the Eastern  
11 District of California by filing a new civil rights complaint or habeas petition in that  
12 court, however the Court cannot transfer Plaintiff's in forma pauperis status in this action  
13 to the Eastern District Court. Plaintiff may file a new application to proceed in forma  
14 pauperis in the Eastern District.

15 Accordingly, Plaintiff's motion to voluntarily dismiss the instant action without  
16 prejudice (docket no. 15-1) is GRANTED and his motion to transfer his in forma pauperis  
17 status (docket no. 15-2) is DENIED. The Clerk shall terminate any pending motions and  
18 close the file.

19 IT IS SO ORDERED.

20 DATED: 4/30/07

  
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Darrell L. Bradford  
3 T-49982  
4 Kern Valley State Prison  
5 P.O. Box 5104  
6 Delano, CA 93216  
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